UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ALVARO FLORES-VASQUEZ, Defendant.	Case No. 5:18-cr-00503-EJD-1 **ORDER GRANTING MOTION TO DISMISS INDICTMENT** Re: ECF No. 22

Before the Court is Defendant Alvaro Flores-Vasquez's ("Defendant") motion to dismiss the indictment for violation of his Sixth Amendment right to a speedy trial. Mot., ECF No. 22. This motion is fully briefed, including supplemental briefs filed after additional discovery. Opp'n, ECF No. 24; Reply, ECF No. 29; Supp. Mot., ECF No. 46; Supp. Opp'n, ECF No. 50; Supp. Reply, ECF No. 53. The Court held a hearing on August 25, 2025, and heard oral arguments from both parties. ECF No. 55.

For the following reasons, the Court **GRANTS** Defendant's motion to dismiss the indictment.

I. BACKGROUND

The Government filed the indictment in this case on October 11, 2018, and arrested Defendant on August 26, 2023, nearly five years later. Defendant argues that the Government's five-year delay violated his Sixth Amendment right to a speedy trial. The following series of events are relevant to the Court's analysis.

Defendant entered the United States in 2001 with Temporary Protective Status ("TPS"). Supp. Opp'n, Ex. A, ECF No. 50-1. Following a conviction in 2005, his TPS was not renewed,

and he was ordered deported in 2007.[1] *Id.* Defendant returned sometime thereafter and was arrested for a DUI in Santa Clara County on April 2, 2018. Mot., Ex. A, ECF No. 22-1. Defendant provided the officers his alias, Oscar Ardon. *Id.* However, Defendant's identity was soon discovered based on his biometrics. *Id.* The Department of Homeland Security ("DHS") also identified Defendant based on his biometrics and lodged an immigration detainer against him. Mot., Ex. B, ECF No. 22-2. Defendant posted bond and was subsequently released. Mot., Ex. D, ECF No. 22-4. The immigration detainer was not honored, per the County's policy. Mot. 3 n.2.

On September 19, 2018, Defendant completed the Santa Clara County DUI first offender program. Mot., Ex. H, ECF No. 22-8. Shortly after, he entered a no-contest plea to reckless driving involving alcohol on September 25, 2018. Mot., Ex. D. The court sentenced Defendant to fifty days in custody, three years of probation, and fines and fees. *Id.* Approximately two weeks later, on October 11, 2018, the Government filed the indictment in this case for one count of illegal reentry in violation of 8 U.S.C. §§ 1326(a) and (b)(2), and the Court issued an arrest warrant. Indictment, ECF No. 1. The indictment alleges an April 2, 2018, found-in date. *Id.*

Defendant was re-booked in Santa Clara County jail to serve his sentence approximately seventeen days later, on October 28, 2018. Mot., Ex. G, ECF No. 22-7. He was booked under the same Personal File Number ("PFN") noted in his immigration detainer. *Id.* The Government did not place a federal hold on him at that time. Defendant subsequently served his sentence through the Sherriff's Weekend Work Program from November 1, 2018, through November 17, 2018. *Id.*

ICE began its search for Defendant nearly one year later, in October 2019. Supp. Mot., Ex. O, ECF No. 49-10. It created a Field Operations Worksheet on October 16, 2019, that listed four addresses connected to Defendant: (1) his address at Ranchero Way in San Jose; (2) the address in probation's records[2] at Reseda Drive in Sunnyvale, where his sister lived; (3) his mother's address at El Camino Real in Santa Clara; and (4) his sister's address at Dias Ave in Sacramento. *Id.* The

[1] Though the Government discusses in depth the details of his conviction and removal, *see* Supp. Opp'n 2–3, these facts are irrelevant to the Court's analysis.

[2] The Field Operations Worksheet also noted that ICE obtained information "per probation," but there is no other information regarding communications with "probation."

worksheet also noted nine of Defendant's relatives and their respective addresses. *Id.* The Government never attempted to contact any known family member.

On October 25, 2019, the Government advised the Court that Defendant was a "fugitive," and the case was re-assigned to the Executive Committee. Order Reassigning Fugitive Criminal Case, ECF No. 2.

On October 30, 2019, ICE surveilled the El Camino Real address and observed two males and a female exist the apartment, but did not see Defendant. *See* Supp. Mot., Ex. O. ICE did not attempt to knock on the door or speak with anyone at the apartment. Approximately five months later, and two years after his initial arrest in Santa Clara County, ICE requested copies of the police report from this arrest. Supp. Mot., Ex. L, ECF No. 46-2. The report included Defendant's sister's address and Defendant's current phone number. *Id.* ICE later conducted unsuccessful surveillance efforts at the Ranchero Way and El Camino Real addresses between July 2020 and January 2021. Supp. Opp'n, Ex. C, ECF No. 50-3. Again, ICE did not attempt to knock on the door or speak with anyone at the house during its surveillance efforts.

Meanwhile, Defendant had been paying off the fines and fees associated with his Santa Clara sentence and completed all payments on September 24, 2020. Mot., Ex. J, ECF No. 22-10. The address listed for his payments remains the same address where his sister and brother-in-law live.

For the next two years, ICE periodically conducted routine database checks and carried out one unsuccessful surveillance at the Ranchero Way address and El Camino Real address. Supp. Opp'n, Ex. C, ECF No. 50-3. Again, ICE did not attempt to knock on the door or speak with anyone at any residence.

Nearly two years later, the South Dakota State Highway Patrol stopped Defendant for speeding on August 26, 2023, and arrested him on an outstanding immigration warrant and the warrant issued in this case. Supp. Opp'n, Ex. C. On October 4, 2023, Defendant appeared in this district and entered a plea of not guilty. *See* ECF No. 5.

II. DISCUSSION

The Supreme Court in *Barker v. Wingo*, 407 U.S. 514 (1972), identified four factors to weigh in determining whether a delay rises to the level of a Sixth Amendment violation: "(1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of the right; and (4) the prejudice resulting from the delay." *United States v. King*, 483 F.3d 969, 976 (9th Cir. 2007) (citing *Barker*, 407 U.S. at 531–33). The Court finds all factors weigh in favor of granting Defendant's motion.

A. Length of Delay

Under the Sixth Amendment, delay is generally measured from "the time of the indictment to the time of trial." *United States v. Gregory*, 322 F.3d 1157, 1162 (9th Cir. 2003). Courts have also measured delay from the date of the indictment to the time of arrest or initial appearance. *See, e.g.*, *United States v. Espinoza-Ruelas*, 753 F. Supp. 3d 830, 383 (N.D. Cal. 2024) (measuring delay between indictment and arrest); *United States v. Gonzalez-Martinez*, 634 F. Supp. 3d 853, 863 (E.D. Cal. 2022) (same). The Ninth Circuit has said that the length of delay must be at least presumptively prejudicial[3]—i.e., one year from the time of the indictment to the time of the arrest or trial—to meet this first factor and trigger a court's consideration of the other *Barker* factors. *Id.* at 1161–62; *see also King*, 483 F.3d at 976. And even if the delay passes the one-year threshold, it "does not weigh heavily" in the defendant's favor if it is not "excessively long." *Id.* (twenty-two-month delay was not "excessively long"); *see also United States v. Beamon*, 992 F.2d 1009, 1014 (9th Cir. 1993) (seventeen-month and twenty-month delays were not "great"); *contra United States v. Shell*, 974 F.2d 1035, 1036 (9th Cir. 1992) ("Five years delay attributable to the government's mishandling of Shell's file, like the eight year delay in *Doggett*, creates a strong presumption of prejudice.").

The Court finds that the five-year delay between the indictment and Defendant's arrest not only satisfies this factor, but under the Ninth Circuit's decision in *Shell*, "creates a strong presumption of prejudice." *Shell*, 974 F.2d at 1036 (five-year delay); *see also United States v.*

[3] In this way, this factor has some overlap with the last factor, which further examines prejudice.

Alexander, 817 F.3d 1178, 1181 (9th Cir. 2016) ("[T]he delay of almost five years is sufficiently lengthy to trigger an inquiry into the other factors."); *United States v. Reynolds*, 231 F. App'x 629, 631 (9th Cir. 2007) ("The district court erred in finding that the four-year, eight-month delay between Reynolds's indictment and his arrest was not uncommonly long.") (unpublished).

The Government concedes that the delay here satisfies the first factor, stating that "four-to-five years is a considerable delay, and longer than many of the delays frequently cited as not 'excessive' and not 'great.'" Opp'n 6. However, the Government contends that it is not *so long* as to trigger a *strong* presumption of prejudice, such as the delays in *Doggett v. United States*, 505 U.S. 647, 651–52 (1992) (delay of over eight years) and *United States v. Mendoza*, 530 F.3d 758 (9th Cir. 2008) (delay of ten years). The Court finds the Government's argument unpersuasive. The Ninth Circuit in *Shell* explicitly cited to the Supreme Court's decision in *Doggett* and found the five-year delay in *Shell* similarly "excessive" to the eight-year delay in *Doggett*. The Government failed to address this finding from *Shell* and therefore failed to provide the Court any reason to depart from it.

B. Reason for Delay

The next factor—the reason for the delay—is "the focal point of the inquiry." *King*, 483 F.3d at 976. This element essentially examines whether a defendant or the government was more to blame for the delay. *See id.* The government has an obligation to pursue a defendant and bring him to trial with reasonable diligence. *Mendoza*, 530 F.3d at 762–63. While the government is not required to "make heroic efforts" to locate a defendant who is purposefully avoiding apprehension, *United States v. Sandoval*, 990 F.2d 481, 485 (9th Cir. 1993), the government is considered negligent when the defendant is not attempting to avoid detection, and the government makes no serious effort with reasonable diligence to find him. *Mendoza*, 530 F.3d at 762–63. Such negligence "falls on the wrong side of the divide between acceptable and unacceptable reasons for delaying a criminal prosecution once it has begun." *Doggett*, 505 U.S. at 657.

The Court finds that this factor weighs in favor of Defendant. The evidence shows that Defendant was living openly for five years, and the Government failed to use the information

available to it to arrest Defendant with reasonable diligence.

First, the Government could have, but did not, track Defendant's state court proceedings. Following the indictment filed on October 11, 2018, Defendant was re-booked in the Santa Clara County jail on October 28, 2018, to serve his sentence.[4] He was booked under the same PFN associated with the prior immigration detainer. While Defendant did not serve his sentence in custody, had the Government diligently followed the state court proceedings and issued a federal hold on him, they could have arrested him at that time. Defendant then served his sentence through the Sherriff's Weekend Work Program from November 1, 2018, through November 17, 2018, providing another opportunity for the Government to execute the arrest warrant. Defendant also consistently paid the fines and fees associated with his sentence until he completed all payments on September 24, 2020, yet the Government made no effort to obtain any information from his payment records.

Second, the Government waited approximately one year before even beginning to search for Defendant in October 2019. And notably, while ICE created a Field Operations Worksheet on October 16, 2019, it appears they did not carry out any surveillance efforts until October 30, 2019—five days after the Government represented to the Court that Defendant was a "fugitive."

Third, ICE failed to request a copy of the police report from the DUI arrest until two years after the incident, on April 2, 2020.[5] This police report contained not only a family member's address, but also Defendant's phone number, which was in use at that time. Despite having his cell phone number, the Government made no attempt to call Defendant or track him through his phone.

Fourth, despite having contact information for nine of Defendant's family members as of October 2019, the Government never attempted to contact any family member at any time.

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[4] *See* Part I. for citations to the facts discussed in Part III.

[5] The Government defends this delay by arguing that, "to the extent that Flores-Vasquez offers that law enforcement could have asked for the records of his arrest more quickly, precisely who to ask for said records is only evident upon some reflection . . . . " Supp. Opp'n 14. This is no excuse. The Court expects the Government to be fully capable of determining which local law enforcement department to contact for an arrest record without needing two years for "reflection."

Fifth, the Government's surveillance efforts fell short of reasonable diligence. At no point during any surveillance effort did ICE approach a house, knock on a door, or attempt to speak with any resident. The attempts at surveillance were also few and far between—ICE surveilled approximately one address in October 2019, two addresses sometime between July 2020 and January 2021, and two addresses in May 2022. Notably, they never surveilled his address at Tasman Street.

The Court finds these facts analogous with those in *Espinoza-Ruelas*, where the court similarly found that the government failed to diligently apprehend the defendant during the nine years that passed between the indictment and his arrest. *Espinoza-Ruelas*, 753 F. Supp. 3d at 835–37. Though the government attempted to surveil his house three times and thought he moved based on information from a family member, they ceased surveillance efforts too soon—the defendant continued to live there for three years after his indictment. *Id.* The government also made no attempt to contact family members, despite having contact information. *Id.* And while the defendant resided at different addresses over time, there was no evidence that he attempted to conceal his location. *Id.* Although the defendant had used aliases in the past, all his aliases were known to the government. *Id.*; *see also United States v. Vasquez*, 15 F. Supp. 3d 1000, 1003 (E.D. Cal. 2014) (rejecting the government's diligence argument where the government surveilled the address about ten times for six months and then relied on database searches); *United States v. Serrano*, 829 F. Supp. 2d 910, 914 (S.D. Cal. 2011) (rejecting diligence argument based on a single attempt to locate the defendant followed by database searches).[6]

The Government argues the delay is not a result of their negligence, but instead the result of factors outside of their control, including: (1) the COVID-19 pandemic; (2) Santa Clara County's policies regarding immigration enforcement; (3) the lack of help anticipated from

[6] The Court is unpersuaded by the Government's attempt distinguish *Espinoza-Ruelas*. The Government highlights the nine-year delay there and the fact that the defendant never used his aliases during that time. However, the length of the delay has little bearing on the Court's discussion of the reason for the delay, and the Government has only presented evidence of Defendant using his alias once during his DUI arrest, which occurred prior to his indictment.

Defendant's family; and (4) Defendant's use of various addresses and aliases. The Court finds each of the Government's justifications unpersuasive.

First, though the Government cites generally to COVID-19 as a cause for their delay, they provide the Court no evidence or arguments as to how the pandemic affected their efforts in this case specifically. And notably, approximately seventeen months passed between the indictment and the start of the pandemic, during which time the Government took little to no action.

Second, it is true that Santa Clara County has in place certain policies against assisting immigration officials in the enforcement of immigration laws. However, this is not an immigration case; this is a federal criminal indictment before a district court. Defendant presented evidence that Santa Clara County actively supports the Government in the investigation of federal crimes such as the one here, and the Government has failed to rebut that evidence.

Third, the Government has similarly provided no evidence to support their argument that contacting Defendant's family members would have proven fruitless. This unsupported assumption does not justify the Government's failure to attempt contact.

Finally, all evidence in the record suggests that Defendant lived openly during those five years, unaware of this indictment. While Defendant traveled between different family members' homes, there is no evidence that this was done to evade arrest—and importantly, the Government had knowledge of every address where Defendant stayed. And while Defendant provided an alias to the officers during his Santa Clara arrest in 2018, there is no evidence that he used an alias again during the five years between the indictment and his arrest. *See Gonzalez-Martinez*, 634 F. Supp. 3d 853 (drawing a distinction between attempting to evade detection in connection with criminal conduct occurring at that time and the subsequent adoption of an alias after learning about a new indictment). And even if he had, the Government again had knowledge of any alias Defendant used in the past. *See Espinoza-Ruelas*, 753 F. Supp. 3d 830 (noting the government's knowledge of all aliases).

Therefore, considering the information readily available to the Government, the Court finds its attempts at surveillance and routine database checks insufficient to establish reasonable

diligence.

C. Defendant's Assertion of the Right

The third factor requires that Defendant assert his right to a speedy trial. *Barker*, 407 U.S. at 531. "[A] defendant's obligation to assert his speedy trial right only arises after he knows that he has been indicted." *Espinoza-Ruelas*, 753 F. Supp. 3d at 838 (citing *United States v. Beamon*, 992 F.2d 1009, 1013 (9th Cir. 1993) (finding no fault on defendants for not asserting speedy trial right without knowing they were indicted)).

There is no dispute that Defendant met this requirement—Defendant informed the Government of his intent to assert his right to a speedy trial when he first appeared in this district on October 4, 2023, and the defense formally asserted the right when he made his first district court appearance on November 6, 2023. There is no evidence that Defendant knew of this indictment at any point prior to his arrest in this case.

The Government concedes that this factor is satisfied but argues the factor should be neutral because trial has not yet been set, and the parties have made several agreements for continuances. The Court finds the Government's arguments unsupported by case law and irrelevant to the inquiry here—as discussed in the first factor, the right to a speedy trial can be measured from the time of the indictment to the time of the arrest, regardless of whether a trial date has been set. *See Espinoza-Ruelas*, 753 F. Supp. 3d; *Gonzalez-Martinez*, 634 F. Supp. 3d. The Court also notes that some of the continuances in this matter were due to the Government's delay in producing discovery related to Defendant's motion to dismiss to indictment.

D. Prejudice

The remaining and "critical" *Barker* factor is whether Defendants have been actually prejudiced as a result of the delay. *Gregory*, 322 F.3d at 1162. "[N]o showing of prejudice is required when the delay is great and attributable to the government." *Id.* at 1162–63 (internal quotation marks omitted). However, the government can "persuasively rebut" this presumption with evidence of actual prejudice. *Shell*, 974 F.2d at 1036.

As the Court found above, the five-year delay here is excessive and attributable to the

Government. Therefore, Defendant is not required to show actual prejudice, and the burden is on the Government to rebut the presumed prejudice with evidence. *Id.* The Court finds the Government failed to meet this burden. Three kinds of prejudice are generally associated with a speedy trial violation: oppressive pretrial incarceration; anxiety and concern of the accused; and the possibility that the accused's defense will be impaired. *See Beamon*, 992 F.2d at 1014 (citing *Doggett*, 505 U.S. at 654). The relevant prejudice here is the possibility that the delay will impair the defense. The Government argues that the delay will not impair the defense because the Government can rely on documents to prove its case-in-chief, the reliability of which are generally not impacted by the passage of time. However, the Government offers no evidence and fails to address the potential loss of documents or witness memory related to any defense Defendant might have asserted. *See Shell*, 974 F.2d at 1036 ("[The government] suggests that because Shell has conceded that most of the essential witnesses and documentary evidence is still available, the presumption of prejudice is rebutted. We are not persuaded. Although [*Doggett*] did not define precisely what type of evidence must be shown to rebut the presumption, we have little doubt that the government has failed to meet its burden here.").

* * *

The Court finds that the five-year delay between the indictment and arrest was excessive; the delay was the result of the Government's negligence; Defendant asserted his right to a speedy trial; and the Government failed to rebut the presumption of prejudice. Accordingly, the Court finds that the Government violated Defendant's Sixth Amendment right to a speedy trial and dismissal is appropriate under *Barker*.

III. CONCLUSION

Based on the foregoing, the Court **GRANTS** Defendant's motion to dismiss the indictment.

IT IS SO ORDERED.

Dated: September 8, 2025

EDWARD J. DAVILA
United States District Judge